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Report of the Committee of Elections, and Statement of the Minority of the Said Committee, in the Case of Andrew Roberts, Claiming to Hold a Seat in the House of Representatives as a Member from the Town of Waterborough

10th Legislature of Maine

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[LEGISLATURE OF MAINE.]

1830.

REPORT

OF THE

COMMITTEE OF ELECTIONS,

AND

STATEMENT OF THE MINORITY OF SAID COMMITTEE,

IN THE CASE OF

ANDREW ROBERTS,

CLAIMING TO HOLD A SEAT IN THE

HOUSE OF REPRESENTATIVES,

AS A MEMBER FROM THE

TOWN OF WATERBOROUGH.

Portland :

DAY & FRASER....Printers to the State.

1830.

Mr. SWAN, of Portland, moved the following Order :

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, FEB. 3, 1830.

The Committee on Contested Elections having made a Report on the case of Andrew Roberts, claiming to have a right to a seat in this House—and the minority of said Committee having also made a written statement of their views in the case of said Roberts,

ORDERED, That 500 copies of the Report of said Committee be printed for the use of the members—and that the statement of the minority be also printed.

Extract from the Journal.

Attest,

JAMES LORING CHILD, *Clerk.*

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, FEB. 3, 1830.

THE Committee of this House on Contested Elections, to whom has been referred by order of the House, the Memorial of Andrew Roberts, claiming his right to sit and vote as a member of this House, and that he has been duly elected by the town of Waterborough to represent the same in this House the present year, and to whom has likewise been referred the remonstrance of William Thing and twenty eight others, legal voters of said town of Waterborough against the election of said Roberts as a Representative of said town, have had the same under consideration, and after a full examination by your Committee of all the evidence in the case adduced by said Roberts, and by said Remonstrants—they now

REPORT,

That on the fourteenth day of September last, being the second Monday in said September, the electors of the town of Waterborough were duly assembled to elect a Representative in the meeting-house in said town, a convenient and commodious place for holding, regulating, ordering and conducting the proceedings thereof—that the said Andrew Roberts, and John Hill jr. and Orlando Bagley were the selectmen of said town, and that said Orlando Bagley was town clerk ; that said selectmen and clerk were present at said meeting, and occupied and held an elevated and convenient station in said house in the pulpit, or desk of the same, and opened the meeting and directed the order of proceedings—and after voting for Governor and Senators, five separate ballots were taken for the choice of a Representative, which were sorted, counted and declared and recorded, but no choice was made by a majority of the votes given. On the first ballot there were given 290 votes ; on the second 274 votes ; on the third 264 votes ; on the fourth 254 votes, and on the fifth 244 votes—at each of said ballots, said Roberts was a prominent candidate, and had at each ballot, a larger number of votes than any other candidate. Said Hill received some votes at the first and second ballot ; and the said Bagley received some votes at every ballot, but the last, when he did not consider himself a candidate and was not voted for.

At the first two or three ballotings, Mr. Hill acted as chairman of the selectmen, and in the presence of the others, directed the proceedings. At the last ballot Mr. Bagley acted as

chairman, and directed the business of the meeting, and continued afterwards to direct the proceedings. Soon after the result of this last ballot was declared, it being between the time of sunset and of its becoming dark, Col. Bradeen, an elector of the meeting made a motion to adjourn the meeting without day, which was seconded, and afterwards stated and put to the meeting by Mr. Bagley, who was still directing the proceedings. Col. Bradeen was requested by several to vary his motion so as to adjourn the meeting to the next, or some future day, and it was refused by the mover to vary his motion—some discussion took place, and several objected to the motion, and there was some bustle and noise in the house, but not of a violent or tumultuous character. Mr. Bagley, in the presence of the other selectmen, and without objection from them as to putting the motion—stated and put the same to the meeting—whereupon the meeting voted by holding up the hand—and immediately after the contrary, or those opposed were called to vote, and hands were raised against the motion ; and the question on said motion was put more than once by said Bagley in the same manner, and a decided majority of the electors voted for said motion—and said Bagley and the selectmen were called upon to declare the result of the vote, but they declined or neglected to do it, publicly assigning no reason at the time for the neglect. It coming on dusk, a lighted candle was set near the selectmen—much confusion and noise ensued, and indecent, improper and irritating language was used to the electors by said Roberts in his place. Whereupon the meeting became tumultuous and disorderly ; although no personal violence appears to have been used by any person to another—and while some were upbraiding Mr. Bagley for not declaring the former vote to adjourn without day, Mr. Roberts called for “order,” “order,” and enquired for a constable, but order was not restored. A motion was made about this time to adjourn to the next day at nine of the clock in the forenoon. Whereupon increased clamour and dispute arose, some denying the power to adjourn to a future day, and some alledging that the meeting was adjourned without day—and the said Roberts was claiming the right of the Selectmen to adjourn to a future day without any vote of the Town for the purpose, and desired Bagley to adjourn the meeting to the next day at nine of the clock in the forenoon, or to some future day ; but Bagley declined, denying the power of the Selectmen so to do without a vote of the town. The said Roberts in the midst of confusion, noise, disorder and tumult in the meeting, put the question to vote so to adjourn, and several persons near to him and friendly to the motion, voted by raising the hand. The said Roberts immediately after, and while the disorder and tumult continued, proclaimed that the meeting was adjourned to the next day at 9 of the clock in the forenoon, at his own risk, which was understood by the electors generally to mean,

that the said Roberts assumed to adjourn the meeting by virtue of his power as Selectman, without any vote of the Town, which power he had just before claimed and which had been objected to. The said Roberts immediately, or very soon after, put out the candle, and the electors and Selectmen retired and left the house. The said Roberts acquiesced at the time as well as afterwards, in the aforesaid understanding of the electors, that he adjourned the meeting by virtue of his power as selectman and at his own risk. He did not request the clerk to take notice of the vote by him last put, nor did he, nor the other selectman, or any one else intimate or state the passage of such a vote to him, or request him to record the same, and said clerk testifies that he had no knowledge of such a vote. Whereupon said Bagley, as town clerk, made a record of said proceeding according to his own understanding, and according to that of the electors generally in these words—"This meeting is adjourned by Andrew Roberts until nine o'clock to-morrow;" which record was shortly afterwards known to said Roberts, and was not called in question, or objected to by him or by any other person.

During the above proceedings, which took place after Col. Bradeen's motion was made to adjourn without day, the meeting was as full, and the electors present, as numerous as at the balloting before had. The motion to adjourn to the next day, and its being put by Roberts was, as appears to your committee, unknown to most of the electors present, and the meeting as such had no opportunity to vote on that question.

Your Committee further Report, that at nine of the clock on the next day in the forenoon, it being the day fixed by a public law for military duty by company musters for a review and inspection of arms, the said selectmen and town clerk met at said meeting-house, and there received the votes for a Representative of such electors as attended, which were 91 in number on the first ballot, without effecting a choice—and on the second ballot eighty nine votes were given, whereof fifty-one were for Andrew Roberts.

On these facts, your Committee are of opinion, and it appears to them, that the motion to adjourn the meeting without day was carried in the affirmative, and that it was within the power of the selectmen presiding, to have made the vote on that motion certain, and to have declared the same; and that the decision on that motion was in the affirmative. That this motion was regularly before the meeting, and that it was the duty of the selectmen to have made the same certain before any other question could be properly put or taken, which they neglected, or refused to do, though requested.

Your Committee are further of opinion, that the supposed proceedings on a motion to adjourn said meeting to the next day were colourable and fraudulent in their character upon the electors

who composed the greater part of the meeting, and that the adjournment proclaimed by said Roberts, and which was entered of record by the Clerk, was by him ordered and directed in the exercise and assumption of a power independent of any vote, act, or valid expression of the voice of the electors composing the meeting. Your committee are further of opinion, that it was not beyond the power of the selectmen presiding in said meeting by taking reasonable and proper means to have made the vote certain on the question to adjourn without day, and to have declared the same in the affirmative according to the fact ; and that the neglect and refusal of the selectmen to make this question certain, and to declare the same, was the principal cause of the increased disorder and confusion in the meeting. And your committee are further of opinion that it was at any period of said meeting within the power and ability of said selectmen to have reduced said meeting to order ; and their just duty required them, whenever disorder arose, to have taken time in the first instance to restore order, before any further proceedings were had. The committee further report that the character of the proceedings as to an adjournment of said meeting to the next day, was such as to destroy all power and ability of the electors rightfully to act on the business before them, thereby subverting their rights of suffrage and the freedom of elections.

Your Committee therefore finally report that said meeting of the town of Waterborough was not rightfully adjourned to the next day, but was dissolved, and that the meeting on the fifteenth day of September last at which said Andrew Roberts was declared elected, was not in conformity, but in violation, and by subversion of that degree of freedom essential to the exercise of the elective franchise, to protect the right of suffrage, and to the support of a free government, and that said Roberts is not entitled to sit and vote in this House as a Representative from the town of Waterborough.

WILLIAM CLARK,
EDWARD E. BOURNE,
MILFORD P. NORTON.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, FEB. 1890.

The minority of the Committee of this House on contested elections to whom was referred the Memorial of Andrew Roberts claiming to have been duly elected as a Representative for the present year from the town of Waterborough, and the remonstrance against the right of said Roberts to be admitted to a seat in this House having had the same under consideration and fully heard all the evidence adduced by both parties now

REPORT,

That on the day of the annual election to wit the second Monday of September last a meeting of the inhabitants of said town of Waterborough was duly notified and held for the purpose of electing a Representative and other officers.—That the selectmen, said Andrew Roberts being one of them presided at said meeting, which was holden at the usual place in said town ; —that after the votes of the inhabitants had been given in for Governor and Senators, they proceeded to ballot for a Representative, and that five several ballotings were had, and no choice effected. The whole number of votes given at the first ballot was 290, which number decreased at each successive balloting, and at the fifth ballot the whole number of votes was 244. At each of said ballots, Mr. Roberts had a larger number of votes than any other candidate. The other two selectmen were also candidates, and both received votes at the first and second ballot, and one of them until the last. It appears that during the first part of the meeting Mr. Hill, one of the selectmen, presided and continued to do so until the fifth ballot, when Mr. Bagley, another of the selectmen, acted as chairman and directed the business of the meeting. While the votes given at the last ballot were being counted, Samuel Bradeen, a legal voter in said town, agreed in presence of a witness who testifies to the fact, “that if Andrew Roberts should be the highest candidate, to make a motion to dissolve the meeting, and if they could not get a vote to dissolve, then to make a motion to adjourn without day, and keep a contention if possible until after twelve o'clock at night, stating that it would not be legal to choose a Representative after that hour.”

The correctness of this statement is denied by Bradeen on oath. We find however that soon after the result of the last ballot was declared, a motion was made by said Bradeen to adjourn the meeting without day, which motion was seconded and afterwards duly put to the meeting by Bagley, then presiding. Bradeen war

requested to vary his motion so as to propose an adjournment until the next or some future day, which he refused to do. This motion appears to have given rise to some discussion, and to have produced some disturbance and confusion in the house,—some being anxious that there should be an adjournment to some future day, others that the meeting should be dissolved. Mr. Bagley as presiding officer, then put the motion and some voted for it by holding up their hands ; immediately those opposed to the motion were called on for their votes, and they voted against the motion in the same manner. Mr. Bagley testified that he believed he put the motion more than once, for the purpose of ascertaining the result correctly, but was unable to decide whether a majority voted in favor of it or not. Bagley was then called on to declare the vote, but declined ; as he says because he was unable to ascertain whether there was a majority for, or against the motion. Several witnesses have testified that they thought there was a majority in favor of the motion, they voting for it themselves. While these transactions were going on, it being now dark, a candle was brought in and placed before the selectmen. Much noise and confusion prevailed at this time. A question appears to have been raised and discussed with some zeal, whether the town had a right to adjourn the meeting to another day, and whether a Representative chosen at such adjournment, would be legally chosen. It is testified by many that that Mr. Roberts claimed it as the right of the selectmen, to adjourn the meeting without a vote of the town. During the disorder and noise that prevailed, Mr. Roberts repeatedly called the meeting to order, but not being able to quell the confusion, he called upon a constable to assist him, who could not, or certainly did not succeed in restoring order. A motion was then made and regularly seconded, to adjourn until nine o'clock the next day, which motion was put to the meeting by Mr. Roberts, and carried in the affirmative, no one disputing the vote. The affidavits of seventeen individuals, purporting to be legal voters in the town of Waterborough, were laid before your committee, all of whom state that the motion to adjourn until the next day, was agreeably made, seconded, and put to the meeting by Mr. Roberts, who then presided, and they each of them state that they voted for said adjournment, and that the vote was declared by said Roberts, and disputed by no one present ; and thereupon said Roberts declared the meeting to be adjourned until the next day at nine o'clock. It is further testified by witnesses produced on the part of the remonstrants, that Mr. Roberts in adjourning the meeting, stated that he did it at his own risk. From the fact that there was much dispute about the right of the town to adjourn, so as legally to choose a Representative at a future day, and from the evidence before them, the minority of your committee believe, that the risk intended to be assumed by Mr. Rob-

erts, was of the legality of an adjournment to a future day by a vote of the meeting, and if he was understood by any in adjourning the meeting, to exercise his individual power as one of the selectmen, distinct from, and independent of the vote that had been passed, it must have been because they had not attended to the doings of the meeting. The town clerk, Mr. Bagley, states that he heard a motion made by several to adjourn until the next day, but did not hear the motion put or the vote declared, though he admits that it might have been done without his hearing it.—He only heard the adjournment declared by Mr. Roberts, and made his record accordingly. By the depositions of thirteen of the voters, it appears that they did not hear the motion put to the meeting to adjourn until the next day, or the vote declared, all of which might well have been without the presumption of fraud, or illegality. With respect to a large majority of the meeting, your committee have no means of ascertaining whether they did or did not hear the motion put to adjourn until the next day. As it is fully proved that such a motion was made, seconded, put, and declared to be a vote; it is to be presumed that all heard it who were present, except those who have testified to the contrary.

The minority of your committee further report, that on the next day, the same being the day appointed by law for military duty, and the annual inspection of the militia, a meeting was held at nine o'clock in the forenoon, according to adjournment—that the selectmen presided, received, sorted, counted, and declared the votes then and there given for a Representative, that at the first ballot, the number of votes given was 91, and no choice was effected, that on the second ballot, the number of votes given was 89, fifty-one of which were for Andrew Roberts, who was thereupon declared to be elected.

From the foregoing facts, the minority of your committee are of opinion, that there was no vote or decision of the meeting on Monday, to dissolve said meeting or to adjourn without day. In the remonstrance against said Roberts' right to a seat in this House, it is not even intimated that the meeting on the first day was dissolved or adjourned without day, the only objection there urged, is as to the legality of the adjournment, which the record states to have been made by Andrew Roberts. There has been no evidence before your Committee, that at the time it was contended by any one, that the meeting on the first day was dissolved, nor did the inhabitants disperse until after the adjournment to the next day was declared by Mr. Roberts. There has been no evidence before your committee, to satisfy the minority that had the vote been declared or decided on this question, such would have been the result. On the contrary, Mr. Bagley who presided at the time, declares under oath, that he was unable to decide whether the majority was for or against the motion, and

when we take into consideration the lateness of the hour, the consequent darkness, and the numbers present, together with the confused state of the meeting, we are led to believe that the result could not have been ascertained without a division of the house, and that those who thought there was a majority in favor of adjourning, may have been honest and yet mistaken.

The minority of your committee are further of opinion, that the motion to adjourn until the next day was fairly made, seconded, put, and carried, in the affirmative, without any fraud, or attempt to deceive those present. They are led to this conclusion, by a reference to the number who heard the motion, and voted in favor of it, and are of opinion that if there was noise, disorder, and confusion, so that many did not hear or understand the said motion, it was produced if not made by those who were anxious to dissolve the meeting, and prevent the election of a Representative.

The minority of your committee are further of opinion, that if this House should sanction the proceedings of those whose avowed object was to prevent any election of Representative, by dissolving the meeting, which attempted dissolution, does not appear to have been urged until recently, as affecting the legality of the adjournment, not being mentioned in the remonstrance nor acted upon at the time as a dissolution, it would lead to consequences deeply and dangerously affecting the elective franchise of our citizens, by encouraging disorderly conduct, and unwarrantable infringements of the rights of peaceable citizens.

We are also of opinion, that the disorder in said meeting, was produced by the motion to dissolve said meeting, and by those who were in favor of said motion, and that they ought not to be allowed to take advantage of their own wrong.

We are further of opinion, that if the fact, that some were present who did not know of the motion, and vote to adjourn, were sufficient to make the adjournment illegal, it would be almost impossible ever to transact any public business legally.

The minority of your committee are therefore of opinion that the meeting in Waterborough, holden on the second Monday in September last, was not dissolved by any vote or act of said meeting, but was legally adjourned until the next day, and they do report that the said Andrew Roberts was duly elected as Representative from said town of Waterborough and is entitled to a seat in this House, and that a contrary decision, would be a violation, not of his right alone, but of that of the citizens of the town which he claims to represent, and establish a precedent dangerous to the purity of our elections and subversive of our dearest rights as freemen.

JOSEPH G. COLE,
NATHANIEL CLARK.



